

Appl. No.: 10/709,861
Amdt. Dated: 10/3/2008
Reply to Office action of: 04/04/2008

AMENDMENTS TO THE DRAWINGS:

No amendments to the drawings are being presented herewith.

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REMARKS/ARGUMENTS

Claims 1 – 10 remain in this application. No new amendments to the claims are introduced by this response.

Thus, no new matter has been introduced by these amendments to the claims.

Claims 3 – 7 and 9 – 10 were rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically, the Examiner states:

While Applicant has amended the claims to read “the gasoline motor fuel”, there is no antecedent support in claims 1 and 7 for gasoline per se. The claims are directed to “an ethanol containing gasoline motor fuel additive”. There is no gasoline present in these claims.

Applicant respectfully traverses this rejection. As the Examiner has pointed out the claimed invention is directed to “an ethanol containing gasoline motor fuel additive”. Thus, the claimed invention is explicitly claimed for use in “gasoline motor fuel” more particularly in “ethanol containing gasoline motor fuel”. The quoted language is definitely sufficient basis for anyone skilled in the art to know that the claimed “additive” is “added” to a “gasoline motor fuel”. Applicants suggest that to argue, in this case, that there is not sufficient basis lacks merit. Furthermore, would amending Claims 1 and 7 to read “an ethanol containing gasoline motor fuel additive for adding to gasoline motor fuel” make the claims any more clear to those skilled in the art? Certainly it would not. However, if the Examiner has some suggested language Applicants will most willingly consider it. In view of this argument this rejection is now moot and Applicant strenuously requests that it be removed.

Claims 1 – 10 were rejected under 35 U.S.C. 103(a) as being unpatentable over Nelson (US 20020023383). Specifically, the Examiner states:

Nelson discloses a motor fuel additive composition comprising (a) a fuel conditioner component and (b) a detergent component. The fuel conditioner (a) comprises (i) from 2 to 50 percent by weight of a polar oxygenated hydrocarbon compound and (ii) from about 2 to about 50 percent by weight of an oxygenated compatibilizing agent. The detergent component (b) is selected from the group consisting of (i) a reaction product of a substituted

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hydrocarbon (A) and an amino compound (B), and (ii) a polybutylamine or polyisobutylamine (see abstract). The polar oxygenated hydrocarbon has an average molecular weight of from about 200 to about 500, and acid number of about 25 to 175, and a saponification number of about 75 to about 200 (see paragraph 50). The oxygenated compatibilizing agent has a solubility parameter of from about 7.0 to about 14.0 and moderate to strong hydrogen-bonding capacity (see paragraph 51 – 52). The hydrocarbon compound (A) of the detergent component is a substituted hydrocarbon of the formula R_1-X wherein R_1 is a hydrocarbyl radical having a molecular weight in the range of about 105 to 10,000 and X is selected from the group consisting of halogens, succinic anhydride and succinic dibasic acid (see paragraphs 15 – 19). The amino compound (B) is of the formula $H-(NH-(A)_m)_n-Y-R_2$ wherein Y, A, m, n, and R_2 are identical to those in the instant claim 7 (see paragraphs 20 – 22). The polybutylamine or polyisobutylamine is identical to that in instant claim 7 (see paragraphs 23 – 25). Further, the composition includes alcohol such as methanol or ethanol, and additives that are typically employed in motor fuels (see paragraph 58). Nelson also discloses examples wherein the additive composition was added to a base fuel in amounts between 100 ppm and 5000 ppm (see Examples 4, 5, 7 and 9).

Nelson teaches the limitations of the claims other than exemplifying a composition wherein ethanol is present. However, it would have been obvious to include ethanol because Nelson teaches that the compound may be included in the composition.

The proportions of ethanol are not disclosed in Nelson. However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to optimize the proportions of ethanol through routine experimentation for the best results. As to optimization of results, a patent will not be granted based upon the optimization of result effective variables when the optimizations obtained through routine experimentation unless there is a showing of unexpected results which properly rebuts the *prima facie* case of obviousness. See *In re Boesch*, 617 F.2d 272, 276, 205 USPQ 215, 219 (CCPA

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1980). See also *In re Woodruff*, 919 F.2d 1575, 1578, 16 USPQ2d 1934, 1936-37 (Fed. Cir. 1990), and *In re Aller*, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955).

Nelson is silent with respect to the order in which the additive is added to the base fuel. However, selection of any order of mixing ingredients is *prima facie* obvious.

Applicants respectfully traverse these rejections. Applicants again are not sure why the Examiner continues to cite the Publication Number of the long issued Nelson US Patent 6,488,723 however Applicants will refer to this reference as the Nelson ('723) patent reference throughout this response. One of the keys to Applicant's invention is the ability to add the alcohol octane number enhancing additive to the additive package instead of to the gasoline motor fuel prior to the additive package being added to the gasoline motor fuel. Another key to Applicant's invention provides for maintaining the advantages of the alcohol octane number enhancing additive at lower levels than when it is added to the gasoline motor fuel before an additive package not containing the alcohol octane number enhancing material. In addition, the claimed invention allows for the maintenance of engine performance with lower than 10 volume percent of ethanol added to the gasoline.

A fair reading of the Nelson ('723) reference discloses an additive package for motor fuels having any alcohol octane number enhancing materials previously blended into the base motor fuel before addition of the additive package of Nelson ('723). Because of the unpredictable nature of organic compositions, adding the alcohol octane number enhancing material to the additive package before mixing into the fuel as opposed to adding the alcohol octane number enhancing material to the fuel before or after mixing in the additive package is not obvious.

There is nothing in the Nelson ('723) reference which discloses, teaches or suggests to one skilled in the art how to modify the reference to provide for reducing the amount of ethanol required to realize the desired level of engine performance and ORI reduction by adding the ethanol to the other components of the claimed additive package instead of adding the ethanol to the fuel directly before or after adding any other additives.

Applicants respectfully but strenuously disagree with the Examiner's argument that "Since ORI is controlled by the addition of the detergent and fuel conditioner, the skilled artisan would not expect ethanol added in any additive amount to negatively affect

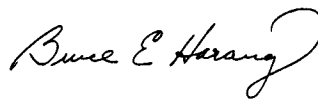
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the fuel's performance" in light of the prior teachings. Applicants respectfully traverse this basis of rejection. In the very reference that the Examiner uses as the basis of rejection here argues against this basis of rejection. Applicants would remind the Examiner of Col. 2, lines 1 – 51 of the Nelson ('723) reference where the cited references discuss not only the ORI problem in internal combustion gasoline engines but also the CCD (combustion chamber deposit) problems introduced by gasoline fuel additives. In fact in the EPA "Final Rule Interim Requirements for Deposit Control Gasoline Additives: Regulatory Text", U.S. EPA Oct. 19, 1994 the government agency responsible for meeting gasoline combustion engine standards teaches that these problems are of grave concern and without solution. Thus, before the invention claimed in Nelson ('723) no solution was even known or thought possible; to suggest that it is now obvious to change parameters and know the results is, Applicants suggest, clearly erroneous.

Clearly, when viewed in this light the Nelson ('723) reference does not disclose, teach, or suggest the use of an additive composition allowing for lower levels of alcohol octane number enhancing material while retaining engine performance as claimed in Applicants' present invention.

In view of the remarks herein, and the amendments hereto, it is submitted that this application is in condition for allowance, and such action and issuance of a timely Notice of Allowance is respectfully solicited.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Bruce E. Harang". The signature is fluid and cursive, with a large, sweeping initial 'B'.

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